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10 Attorneys for The Thacher School; Friend's Ranches, Inc.; Topa Topa Ranch & Nursery, LLC;  
11 Finch Farms, LLC; Red Mountain Land & Farming, LLC; Thacher Creek Citrus, LLC; The Finch  
12 Family Trust; James P. Finch; Robert Calder Davis, Jr.; Robert Calder Davis, Jr., TTEE of Trust  
13 Owned Properties; Sharon H. Booth, Trustee of The Survivor's Trust Created Under Declaration  
14 of Trust of Richard G. Booth and Sharon H. Booth Dated July 10, 1980; David Robert Hamm and  
15 Reeves Orchard, LLC (collectively, the "East Ojai Group")

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **COUNTY OF LOS ANGELES**

18 SANTA BARBARA CHANNELKEEPER, a  
19 California non-profit organization

20 Petitioner,

21 vs.

22 STATE WATER RESOURCES CONTROL  
23 BOARD, a California State Agency; CITY OF  
24 SAN BUENAVENTURA, a California  
25 municipal corporation,

26 Respondents.

CASE No. 19STCP01176

Judge: Hon. William F. Highberger

**DECLARATION OF GREGORY J.  
PATTERSON IN SUPPORT OF NOTICE  
OF EX PARTE APPLICATION TO  
CONTINUE TRIAL**

**Date: January 18, 2022**  
**Time: 1:30 p.m.**  
**Dept: 10**

Action Filed: September 19, 2014  
First Amended Complaint Filed:  
September 7, 2018  
Trial Date (Phase One): February 14, 2022

27 CITY OF SAN BUENAVENTURA, etc.,

28 Cross-Complainant,

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

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DECLARATION OF GREGORY J. PATTERSON

I, Gregory J. Patterson, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Musick, Peeler & Garrett LLP, attorneys of record for The Thacher School; Friend’s Ranches, Inc.; Topa Topa Ranch & Nursery, LLC; Finch Farms, LLC; Red Mountain Land & Farming, LLC; Thacher Creek Citrus, LLC; The Finch Family Trust; James P. Finch; Robert Calder Davis, Jr.; Robert Calder Davis, Jr., TTEE of Trust Owned Properties; Sharon H. Booth, Trustee of The Survivor’s Trust Created Under Declaration of Trust of Richard G. Booth and Sharon H. Booth Dated July 10,1980; David Robert Hamm and Reeves Orchard, LLC (collectively, the "East Ojai Group"). I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify thereto.

2. We received the City of Buenaventura's expert report prepared by Clare Archer and Tamara Klug on August 31, 2021. In preparing the report, Archer and, perhaps Klug, did their own 3D groundwater model and Ms. Archer's opinions are based heavily on the model. I was informed by the East Ojai Group's Expert Anthony Brown, that it was extremely important that he have access to a fully functioning actual model in order for him to be able to review and critique the model and that he would not have time without the model in hand to prepare fully for his deposition and trial testimony.

3. On September 1, 2021 I sent an e-mail to Shawn Haggerty, counsel for the City, in which I requested that the City turn over the model to allow Mr. Brown to run the model. A true and correct copy of this e-mail is attached as Exhibit A.

4. On September 2, 2021, counsel for the City flatly stated that the City would not produce the model. Counsel stated it would revisit the issue only after the East Ojai Group provided its expert report on September 24, 2021. A true and correct copy of this e-mail is attached as Exhibit B.

5. Thereafter, on more than one occasion, I reiterated the need for the model with no success.

1           6.       On November 30<sup>th</sup>, 2021 I sent an e-mail to counsel for the City again expressing  
2 the need for the model and indicating that I was going to continue the deposition of Ms. Archer  
3 and Ms. Klug until we, or the court resolved the matter. A true and correct copy of this e-mail is  
4 attached as Exhibit C. I was later informed the City would not produce the model.

5           7.       On December 1, 2021, again, that same day I sent another e-mail again expressing  
6 the need to have the model and confirming that we were continuing Ms. Klug's deposition. A true  
7 and correct copy of that e mail is attached as Exhibit D.

8           8.       On December 6, 2021 at 11:59 a.m., I sent an e-mail to counsel for the City again  
9 expressing my position that the City was required to turn over the model. In that e-mail I noted  
10 that in the Las Posas water adjudication action pending in Santa Barbara Superior Court, in which  
11 I am involved, all experts turned over their models, including an expert retained Calleguas Mutual  
12 Water District, a Best, Best and Krieger client in that matter. A true and correct copy of this  
13 e-mail is attached as Exhibit E.

14           9.       That same day, counsel for the City sent an e-mail to me stating that they were  
15 prepared to discuss the issue after the deposition scheduled for the next day.

16           10.      Subsequently, I was informed that the City would provide the model subject to a  
17 stipulation regarding use of the model.

18           11.      On December 27, 2021, we finally received the model.

19           12.      I was then informed by my expert, Mr. Anthony Brown that he would require at  
20 least eight weeks to properly review the City model, the State model and a model prepared by the  
21 Ojai Basin Groundwater Management Agency upon which the State considered in developing its  
22 model.

23           13.      Given that the expert discovery deadline was January 12, 2022, and there were  
24 multiple pre-trial deadlines with the trial set for February 14, 2022, it became very clear to me that  
25 we would not have sufficient time to properly prepare for trial, given the lateness in which we  
26 received the City's model and Mr. Brown's need for sufficient time to review and critique the  
27 model.

28

1 14. I also understand that at least one other group of cross-defendants have requested  
2 the model (Whitman et al.) and the City has refused to provide the model because these cross-  
3 defendants did not designate an expert witness. A true and correct copy of the filing made by the  
4 Whitman Group is attached as Exhibit F.

5 15. I notified counsel for the City that I thought we needed to continue the trial. I also  
6 notified counsel for the City of Ojai, counsel for the State, counsel for Casitas and counsel for the  
7 Upper Ojai Basin of my position.

8 16. Initially, all parties, including the City, were agreeable to a continuance. We first  
9 looked at time in April and May. Unfortunately, the parties determined that there were multiple  
10 conflicts during these months. After further back and forth, Mr. Melnick, counsel for the State,  
11 sent an e mail summarizing the conflicts. A true and correct copy of this e-mail is attached as  
12 Exhibit G. It appears there is a window from June 13 -July 1, 2022. All parties except the City  
13 are agreeable to those dates, assuming the Court also is available.

14 17. The City has suggested only a week or ten day continuance which is not acceptable  
15 to the East Ojai Group because it does not provide the time necessary to review the models and  
16 prepare its expert. Such a short continuance would be highly prejudicial to the East Ojai Group.

17 18. To the extent the Court determines it should set the case earlier than June 13, 2022,  
18 the East Ojai Group respectfully requests that the trial be set no earlier than May. The East Ojai  
19 Group will not object to segmenting the trial if, necessary, although I understand that the counsel  
20 for the City and the State do not want to break up the trial over differing dates.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct. Executed on this 13<sup>th</sup> day of January, 2022, at Westlake Village,  
23 California.

24  
25   
26 Gregory J. Patterson

# **EXHIBIT A**

## **Patterson, Gregory**

---

**From:** Patterson, Gregory  
**Sent:** Wednesday, September 1, 2021 3:54 PM  
**To:** Shawn Hagerty  
**Subject:** FW: Cardno Groundwater Report

**Importance:** High

Shawn: We have quickly reviewed the Cardno Groundwater Report. My understanding of the basis of the court's ruling that the City go first was to allow those experts who may respond to address issues raised in the City's expert reports. Based on our initial review, we cannot do that for the reasons expressed below. Given the very short time frame for expert discovery, it would be more efficient for everyone involved if we had the following information and we would be willing to do the same (share the same data sets) and we would agree that the flow models would be used for this matter only. This will, in my mind, save a lot of discovery time and dollars. We should probably get the same data set from the state.

As we see it at the moment:

The opinions presented in the expert report of Claire Archer Ph.D. are based heavily on groundwater flow modeling developed by Cardno. However, her report presents no documentation regarding the development and calibration of the model, and simulation runs from the model. As such, the modeling is a "black box" whose workings are invisible to those not in possession of a functional version of the model.

Therefore, we are formally requesting that Cardno, through their client the City of Ventura, provide a fully functional working version of the model that experts for other parties in this matter can run. In particular (and in addition), Cardno should provide the following to all parties subject to this proceeding:

- All documentation related to model development (e.g., modeling work plan, conceptual model report, model development report, calibration calculations and reports, reports of sensitivity analyses, and documentation of simulations)
- All source data used in development of the model
- All input files (text or ASCII format) necessary to run the models
- All output files (text or ASCII format) from model runs performed in support of GSP development
- All databases, spreadsheets, geographic information system (GIS) shapefiles, and graphics files (e.g., maps) used to develop the models
- All files necessary to open and run the models within the graphical user interface (GUI) (e.g., commercially available software packages like Groundwater Vistas, GMS).

I am happy to discuss at your convenience.

Regards,

Greg

# **EXHIBIT B**

## **Patterson, Gregory**

---

**From:** Christopher Pisano <Christopher.Pisano@bbklaw.com>  
**Sent:** Thursday, September 2, 2021 2:32 PM  
**To:** Shawn Hagerty; Patterson, Gregory  
**Subject:** RE: Cardno Groundwater Report

Greg:

The City's formal response is that we are not going to provide you with the information you have requested. The Court did not require the City to disclose its expert information before all other parties so that other parties could merely respond to the City's experts' reports, with no independent expert analysis. As I understand the Court's July 23<sup>rd</sup> ruling, the City was ordered to disclose first because the City's experts have been working on these issues longer than other parties, and the Court believed that was good cause to require the City to disclose first.

We disagree with the Court's ruling, however we complied with it, and we provided disclosures that meet all requirements of CCP Sections 843 and 2034.010 et. seq. We are not obligated under these statutes to provide you with the information requested below as part of our disclosures, and we are not inclined to do so. Under the Court's order, your clients are now obligated to disclose their expert information on September 24<sup>th</sup>, and we are anticipating that your experts will provide independent analysis of the issues of interconnectivity and the basin boundaries, and that your experts' analysis will either support or refute the opinions provided by the City's experts.

Also, as Shawn mentioned, Dr. Archer provided a separate model report, which is an exhibit to her main report. The model report describes her modeling process in great detail, and provides a roadmap for how she and her team constructed the model from the ground up, and ran the modelling scenarios as support for her opinions.

In short, we respectfully decline your request. We are willing to revisit this issue after all experts have disclosed their reports, at which time we can meet and confer on appropriate scope of expert discovery. But that will not happen until we receive your expert disclosures on September 24<sup>th</sup>. Thanks.

Chris

**From:** Shawn Hagerty <Shawn.Hagerty@bbklaw.com>  
**Sent:** Wednesday, September 1, 2021 4:34 PM  
**To:** 'Patterson, Gregory' <G.Patterson@musickpeeler.com>  
**Cc:** Christopher Pisano <Christopher.Pisano@bbklaw.com>  
**Subject:** RE: Cardno Groundwater Report

Greg: We will provide you with a formal response to this request. We do not agree with your characterization of the Court's order regarding expert exchange dates, and we anticipate a formal initial expert report conforming to CCP 843 from your clients on September 24 that sets forth any independent opinions that your expert(s) may intend to present at the phase 1 trial. Supplemental reports, if any, are scheduled for a later, mutual exchange. Also, please confirm whether you have reviewed the model report that is an exhibit to Ms. Archer's report.



**From:** Patterson, Gregory <G.Patterson@musickpeeler.com>  
**Sent:** Wednesday, September 1, 2021 3:54 PM  
**To:** Shawn Hagerty <Shawn.Hagerty@bbklaw.com>  
**Subject:** FW: Cardno Groundwater Report  
**Importance:** High

**CAUTION - EXTERNAL SENDER.**

Shawn: We have quickly reviewed the Cardno Groundwater Report. My understanding of the basis of the court's ruling that the City go first was to allow those experts who may respond to address issues raised in the City's expert reports. Based on our initial review, we cannot do that for the reasons expressed below. Given the very short time frame for expert discovery, it would be more efficient for everyone involved if we had the following information and we would be willing to do the same (share the same data sets) and we would agree that the flow models would be used for this matter only. This will, in my mind, save a lot of discovery time and dollars. We should probably get the same data set from the state.

As we see it at the moment:

The opinions presented in the expert report of Claire Archer Ph.D. are based heavily on groundwater flow modeling developed by Cardno. However, her report presents no documentation regarding the development and calibration of the model, and simulation runs from the model. As such, the modeling is a "black box" whose workings are invisible to those not in possession of a functional version of the model.

Therefore, we are formally requesting that Cardno, through their client the City of Ventura, provide a fully functional working version of the model that experts for other parties in this matter can run. In particular (and in addition), Cardno should provide the following to all parties subject to this proceeding:

- All documentation related to model development (e.g., modeling work plan, conceptual model report, model development report, calibration calculations and reports, reports of sensitivity analyses, and documentation of simulations)
- All source data used in development of the model
- All input files (text or ASCII format) necessary to run the models
- All output files (text or ASCII format) from model runs performed in support of GSP development
- All databases, spreadsheets, geographic information system (GIS) shapefiles, and graphics files (e.g., maps) used to develop the models
- All files necessary to open and run the models within the graphical user interface (GUI) (e.g., commercially available software packages like Groundwater Vistas, GMS).

I am happy to discuss at your convenience.

Regards,

Greg

# **EXHIBIT C**

## Patterson, Gregory

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**From:** Patterson, Gregory  
**Sent:** Tuesday, November 30, 2021 3:25 PM  
**To:** Christopher Pisano; Shawn Hagerty  
**Cc:** Carter, William; 'Holly Jacobson'; 'Gregg S. Garrison'; 'Marc Melnick'  
**Subject:** RE: expert depos

**Importance:** High

Christopher and Shawn:

We are perplexed as to why the City continues to refuse to produce the model used by your experts. As admitted below and in the Cardno expert report, Ms. Klug "provided input For Ms. Archer's model." In addition, while not providing the specific sections Ms. Klug wrote in the report, it is clear she wrote "two sections" of the Cardno expert report. We have no idea which sections were prepared by her and whether she relied on the model in preparing those sections. How in the world can we ask meaningful questions about her "input" without having the model? How do we understand her involvement in the two sections of the report when we don't know what sections she wrote or whether the model impacted her opinions in the report? How is one of two experts at Cardno the sole custodian of the model? It seems to us Cardno, or the City, is the "custodian."

In short, we have concluded that we cannot meaningfully take Ms. Klug's deposition on the 6<sup>th</sup> without the model and, we will, if necessary seek a court order by ex-parte application requiring that the City turn over the model information we requested long ago and again in Ms. Klug's deposition notice before we take her deposition.

Please reply by noon tomorrow. If the City is unwilling to produce the model, we will postpone the Klug deposition until the court rules on this issue. I am copying those parties I understand intend to participate in person, so they can adjust travel plans, if necessary.

Bill Carter and I are around to have a discussion about this if you would like to do so.

Regards,

Greg

**Gregory J. Patterson**  
*Partner*

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**From:** Christopher Pisano <Christopher.Pisano@bbklaw.com>  
**Sent:** Tuesday, November 30, 2021 12:55 PM  
**To:** Patterson, Gregory <G.Patterson@musickpeeler.com>; Shawn Hagerty <Shawn.Hagerty@bbklaw.com>  
**Cc:** Carter, William <W.Carter@musickpeeler.com>  
**Subject:** RE: expert depos

Greg:

I will be producing the files for Ms. Klug, Dr. Littlefield and Dr. Hanson later this week. I should have Ms. Klug's file ready tomorrow. Please note that while Ms. Klug provided input for Dr. Archer's model, Ms. Klug is not the custodian of the model and its related documents, and she did not rely upon the model in formulating the opinions that she will testify to at the Phase 1 trial. As such, Ms. Klug will not be producing documents related to the model prior to or at her deposition.

Chris

**From:** Patterson, Gregory <[G.Patterson@musickpeeler.com](mailto:G.Patterson@musickpeeler.com)>  
**Sent:** Tuesday, November 30, 2021 9:22 AM  
**To:** Christopher Pisano <[Christopher.Pisano@bbklaw.com](mailto:Christopher.Pisano@bbklaw.com)>; Shawn Hagerty <[Shawn.Hagerty@bbklaw.com](mailto:Shawn.Hagerty@bbklaw.com)>  
**Cc:** Carter, William <[W.Carter@musickpeeler.com](mailto:W.Carter@musickpeeler.com)>  
**Subject:** expert depos

**CAUTION - EXTERNAL SENDER.**

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Chris and Shawn: we will be sending amended notices today to make clear that parties can attend via zoom and changing the time (not the date) per Marc's request. To that end, it is important that we receive the requested documents in the notices and especially the info regarding the model used by the City's experts by tomorrow for Monday's depo, so we can have exhibits prepared with the reporting service prior to the depo.

Regards,

Greg

**Gregory J. Patterson**  
*Partner*

MusickPeeler

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# **EXHIBIT D**

## **Patterson, Gregory**

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**From:** Patterson, Gregory  
**Sent:** Wednesday, December 1, 2021 3:27 PM  
**To:** Christopher Pisano; Shawn Hagerty; 'Gregg S. Garrison'; Holly J. Jacobson; Jeremy N. Jungreis Esq. (jjungreis@rutan.com); 'Marc Melnick'  
**Subject:** Deposition of Ms. Klug/expert witness disclosure  
**Importance:** High

Chris:

Thank you for your response to our request that Ms. Archer's model be produced prior to Ms. Klug's deposition. We view it as unfortunate that the City will not produce the model information as requested. To that end, I note that CCP 843(a)(2) requires the expert to provide "The facts or data considered by the witness in forming his or her opinions" at the time of producing the expert report. It is our position that this would include the model (data) upon which Ms. Archer clearly heavily relied upon in forming her opinions. We simply do not know currently how this model was run that forms the basis of Ms. Archer's opinions. To be clear, we are not simply requesting "documents" regarding the model, but the information, as provided in the notice, to allow our expert to independently examine the model.

Ms. Klug's input for the model raises questions regarding her input and how that affected the model and it is difficult to assess that without the model. We understand that it is the City's position that Ms. Klug had nothing to do with the construction of the model, but it does appear she was aware the model was being developed and may have information relevant to the model. Hard to ask questions when we don't know what the model looks like and how it was run.

Given our disagreement over what should be turned over and when, we agree with your proposal that we continue Ms. Klug's deposition until we resolve the modeling disclosure dispute. We will provide notice of the continuance. Please provide some dates in January that work for you and Ms. Klug.

We agree that everyone should play by the same rules with respect to expert witness disclosures. It appears that the City and the State both prepared models, but no other designated experts have done so. Aquilogic did not independently develop a model and we do not intend to do so, but we must have the opportunity and time to review the models upon which the City and the State rely and how those models were run.

In order to provide sufficient time to allow experts to review the model and advise their clients, we propose that the modeling information requested in the notice be mutually produced 10 business days prior to the expert deposition because three business days does not provide sufficient time for our expert to advise us on his opinion of the model, parameters/assumptions/etc. in order to properly prepare for the deposition. All other files can be produced three days before per code. We also reserve the right to provide a rebuttal report after the City and State's depositions, assuming the models are produced at some point.

If we cannot reach agreement, we intend to file a status report or motion on this issue and try to key it up at the pending December 9<sup>th</sup> status conference for the Court to review.

I am copying the parties who I understand intend to participate in person or via zoom in the various depositions. If there are others who anyone thinks should see this, please forward.

Happy to discuss at your convenience.

Greg

Gregory J. Patterson  
*Partner*

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Greg

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# **EXHIBIT E**



## Patterson, Gregory

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**From:** Patterson, Gregory  
**Sent:** Monday, December 6, 2021 11:59 AM  
**To:** Christopher Pisano; Shawn Hagerty  
**Cc:** Carter, William  
**Subject:** Expert Model

Chris and Shawn: I am unaware of any case where this information was not turned over. Not just in this type of case, but in other computer modeling cases.

The language is clear that all data relied upon by the expert needs to be turned over. Your position in this case is also inconsistent with what was turned over in the Las Posas water adjudication, in which I am involved. In that case the UWCD model was turned over and Calleguas MWD ( A BKK CLIENT IN THAT MATTER) turned over its model.

How is the Las Posas matter, in which BKK turned over the model on behalf of its client, different than this one?

We will bring this to the attention of the court at Thursday's status conference.

Bill and I are happy to discuss at your convenience.

Greg

Gregory J. Patterson  
*Partner*

MusickPeeler

---

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# **EXHIBIT F**



1 ANDREW K. WHITMAN (SBN 128358)  
 2 821 N. Signal St.  
 3 Ojai, Ca 93023  
 4 (805) 444-5671  
 5 [andyw821@gmail.com](mailto:andyw821@gmail.com)  
 6 In Pro Per and Attorney for  
 Heidi A. Whitman, Nancy L.  
 Whitman and John R. and Nancy  
 L. Whitman Family Trust

7  
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF LOS ANGELES

11 SANTA BARBARA CHANNELKEEPER,  
 12 a California non-profit corporation,

13 Petitioner,

14 v.

15 STATE WATER RESOURCES CONTROL  
 16 BOARD, A CALIFORNIA STATE AGENCY;  
 17 CITY OF SAN BUENAVENTURA, a  
 18 California municipal corporation, incorrectly  
 named as CITY OF BUENAVENTURA,

19 Respondents.

20 

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CITY OF SAN BUENAVENTURA,  
 21 a California municipal corporation,

22 Cross-Complainant,

23 v.

24 DUNCAN ABBOTT, an individual, et al.

25 

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Cross-Defendants.

Case No. 19STCP01176  
 Assigned to Judge William F. Highberger  
 Dept.: 10

Complaint filed: September 19, 2014

CROSS DEFENDANTS ANDREW K.  
 WHITMAN, HEIDI A. WHITMAN,  
 NANCY L. WHITMAN AND JOHN R.  
 AND NANCY L. WHITMAN FAMILY  
 TRUST'S STATEMENT RE CITY  
 REFUSAL TO PRODUCE EXPERT  
 DOCUMENTS/MATERIALS

26 TO: CROSS-COMPLAINANT CITY OF SANBUENAVENTURA, ALL PARTIES  
 27 AND THEIR ATTORNEYS OF RECORD:  
 28

1  
 CROSS DEFENDANTS ANDREW K. WHITMAN, HEIDI A. WHITMAN, NANCY L. WHITMAN AND  
 JOHN R. AND NANCY L. WHITMAN FAMILY TRUST'S STATEMENT  
 RE CITY REFUSAL TO PRODUCE EXPERT DOCUMENTS/MATERIALS

1 This Court has allowed for further briefing concerning the Computer Model utilized by  
2 CITY OF VENTURA (CITY) and the associated protective order concerning the model. At the  
3 initial hearing on the motion for approval of the protective order my clients objected on grounds  
4 that the CITY has refused to produce the model despite my clients' willingness to sign the  
5 protective order.

6 **I. THE CITY SHOULD BE ORDERED TO PRODUCE THE EXPERT'S COMPUTER**  
7 **MODEL TO ANY CROSS-DEFENDANT WHO AGREES TO MAINTAIN**  
8 **CONFIDENTIALITY OF THE MODEL AND WITHOUT THE NEED TO**  
9 **PREPARE AND FILE A MOTION AND OBTAIN APPROVAL OF THE COURT**

10 At the ex parte hearing, the CITY's attorneys attempted to distort the factual setting of the  
11 dispute which was created by the CITY. An accurate recounting of how this dispute arose is as  
12 follows: After receiving notice of the CITY's ex parte hearing concerning the protective order,  
13 legal counsel for a handful of cross-defendants (Andrew K. Whitman) communicated with legal  
14 counsel for the CITY and asked that the cross-defendants be added to the names listed in the  
15 protective order. It was volunteered that the CITY would not need to immediately send the  
16 protected material (computer modeling software) and that it was possible that cross-defendants  
17 might not ever request possession of the model.<sup>1</sup> The CITY responded that it would not agree to  
18 add my clients to the stipulation unless I had an expert.<sup>2</sup> I asked the CITY if they had any legal

19  
20  
21 <sup>1</sup> The full text of Whitman's communication to the CITY:

22 "I haven't decided yet whether I want the model but I dont want to have to go to court to approve my inclusion in  
23 the protective order if I later decide I want it. I think the easiest resolution is to add me to the stip and protective  
24 order. At the moment I wouldnt know what I was looking at if I received a copy of the model so don't currently  
25 want a copy. If I get someone to help me understand the model (something I am looking into) I would then want  
26 a copy of the model and agree to be subject to the protective order provisions. If you agree to add my name to the  
27 order (I'm an attorney and represent myself and three others) and also agree that you dont need to send the model  
28 unless I request it (either in the order or as a side agreement) then I wouldnt have to make an appearance tomorrow.  
Thanks for your consideration."

<sup>2</sup> The CITY's response: "I am hesitant to agree to your inclusion at this point before you have retained an expert.  
The point of this stipulation is that the experts are going to get the model in a form that can be altered or manipulated  
so that they can then advise their clients on the merits of the model. The experts can then share the model (or any  
portions of it) with their clients, but that must be done in a "read only" mode. From my perspective, that is the  
best way to insure that the model is only used for litigation purposes. There is a provision in the Stipulation to add  
parties, subject to notice and court approval. I would suggest that once you retain an expert we revisit this issue,  
and at that point I may not have any problem with including you as a party to the stipulation."

1 authority for the proposition that they could refuse to produce expert witness material to a party  
2 willing to stipulate to a protective order? I further indicated I would oppose the stipulation based  
3 upon CITY's refusal to accommodate my clients.<sup>3</sup> The CITY then indicated it would  
4 communicate that my clients opposed the ex parte application.<sup>4</sup> No legal authority for the  
5 CITY's position has ever been provided.

6 When an expert has relied on privileged material to formulate an opinion, the court may  
7 exclude their testimony as necessary to enforce the privilege. *Fox v. Kramer* (2000) 22 Cal.4th  
8 531, 541. The privilege that is claimed is held by the CITY's expert and she has the option to not  
9 provide testimony and thereby protect her work product. She has also been given the option to  
10 have her work protected from dissemination by way of a protective order. What is not an option  
11 is for the CITY's expert to offer opinion testimony that is based upon material that hasn't been  
12 admitted into evidence and without the opportunity of the cross-defendants to examine  
13 concerning the details of the actual computer model relied upon. An expert's opinion that is not  
14 supported by the facts is inadmissible. *Sanchez v. Kern Emergency Med. Transp. Corp.* (2017) 8  
15 Cal.App.5th 146, 155–156. A judge should not permit an expert to testify to an opinion that is  
16 not reasonably based on the evidence. *Pedefferri v. Seidner Enters.* (2013) 216 Cal.App.4th 359,  
17 375.

18 The CITY was asked if there was any legal authority for the proposition that it could refuse  
19 to provide a party with the materials their expert witnesses rely upon<sup>5</sup>. No response to this inquiry  
20 has ever been provided by the CITY.

21 The CITY's objection is apparently based upon the fact that the Whitman Defendants have  
22 not disclosed an expert witness. However, there is no articulation of fact or law that renders  
23

24

25

25 <sup>3</sup> "Can you cite any legal authority for your position at a party who is willing to stipulate to your protective order is  
26 not entitled to a model unless they have an expert? I will be opposing the stipulation based upon your refusal to  
27 accommodate my clients."

26 <sup>4</sup> "I am posting to the message board that you are opposing the application so that the Court is aware of your  
27 opposition."

27 <sup>5</sup> CITY contends it need not produce the evidence and material relied upon their expert in formulating her opinions  
28 if the cross-defendant has not retained its own expert. For the record the Whitman defendants have designated  
Jordan Kier as a non-retained expert.

1 expert retention as relevant to the need to disclose expert materials as part of expert discovery. A  
2 party who does not have an expert is nonetheless entitled to obtain the materials the expert relies  
3 upon in discovery and to cross-examine the expert concerning the materials that form the basis of  
4 the expert's opinion. The computer model that forms the basis of the CITY's requested protective  
5 order is precisely the type of evidence that must be disclosed in discovery. Furthermore, no matter  
6 what the protective order states the computer model will need to be admitted into evidence if the  
7 CITY's expert testifies at trial.<sup>6</sup>

8 The computer model must be part of the evidence if the expert's testimony is to be  
9 admitted. In addition, each cross-defendants has the right to depose and cross-examine the  
10 CITY's expert on all of her opinions, including the basis of her opinions. Cross-defendants must  
11 be permitted to examine the materials the expert relies upon or they are being denied the right to  
12 conduct discovery permitted by the Code of Civil Procedure and denied their legal right to cross-  
13 examine the expert witness both at deposition and trial. If every cross-defendant isn't given the  
14 opportunity to review the material the expert relies upon, then the testimony needs to be excluded.

15 The CITY's position raises an issue previously addressed in this case. The CITY has  
16 asserted that the computer model doesn't serve any purpose other than to an expert witness. This  
17 Court has expressed repeatedly that it is not an expert concerning hydrogeology. Yet, the Court  
18 is required to determine whether hydrogeology experts regularly rely on computer models rather  
19 than actual data collection. If the Court concludes yes - an expert should be expected to rely upon  
20 computer modeling - then the next question is whether the model is the same type that experts  
21 regularly rely upon to form opinions concerning a salient point of testimony.

22 How can this Court decide these foundational questions concerning the admissibility of  
23 the expert's testimony without having the computer model itself in evidence and without having  
24 an expert witness/special master to compare and contrast the computer model with foundational  
25 material that an expert can rely upon? The Court should reconsider the motion to appoint a special  
26

27  
28 <sup>6</sup> The CITY can ask that the computer model be sealed but whether the request will be granted is subject to the First Amendment scrutiny.

1 master to assist the Court given that the CITY has now made it abundantly clear that it will need  
2 expert assistance to decide whether the Court can admit the testimony of the CITY's expert.

3 **II. CONCLUSION**

4 There is no basis for the CITY to refuse disclosure of the computer model prepared by  
5 and relied upon by the CITY's expert. Any cross-defendant who agrees to maintain the  
6 confidentiality of the computer model should receive the model without the need to file a motion.  
7 Treating the information with confidentiality is an accommodation to the expert. If that is not a  
8 sufficient accommodation in her mind then she should withdraw from testifying. A cross-  
9 defendant should not be forced to file a motion (and receive a 100 page opposition from a firm  
10 padding its bills). The burden should be on the expert witness and the CITY to demonstrate why  
11 the signature on a confidentiality agreement is not sufficient protection of the expert's rights.  
12 There is no law which permits an expert's testimony without complete disclosure of the  
13 background material the expert relies upon.

14 Respectfully submitted,

15 Dated: January 7, 2022

16 */s/ Andrew K. Whitman*

17 ANDREW K. WHITMAN, in pro per, and  
18 attorney for HEIDI A. WHITMAN, NANCY  
19 L. WHITMAN and the JOHN R. and  
20 NANCY L. WHITMAN FAMILY TRUST

# **EXHIBIT G**



## **Patterson, Gregory**

---

**From:** Marc Melnick <Marc.Melnick@doj.ca.gov>  
**Sent:** Monday, January 10, 2022 12:44 PM  
**To:** Patterson, Gregory; Carter, William; Christopher Pisano; Holly J. Jacobson; Jeremy N. Jungreis Esq. (jjungreis@rutan.com); Gregg Garrison; Noah GoldenKrasner; Daniel Cooper; Shawn Hagerty  
**Subject:** RE: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

Greg, I'm not sure where others are on this, since no one has responded. But I am happy to talk about it. I'm not amenable to taking a break in the middle of this trial; there are a multitude of problems with that. I understand your desire not to start on February 14, and can agree to that. So it seems to me that that leaves us with trying to find three consecutive weeks where we all and Judge Highberger are available. That should be in everyone's interest.

I don't know what everyone's conflicts are, but someone has to start that conversation. I've gotten my experts' availability, and so let me start with the unavailability dates that I know of, by week. (This includes my experts' unavailability as part of my unavailability.)

March 7 - 11 Melnick unavailable 3/7 to 3/9  
March 14 - 18 Judge unavailable 3/16, 3/17, 3/18  
March 21 - 25 Judge unavailable  
March 28 - April 1 Judge unavailable 3/28 to 3/31; Melnick unavailable  
April 4 - 8 Judge unavailable; Melnick unavailable  
April 11 - 15 Cooper unavailable; Melnick unavailable  
April 18 - 22 Cooper unavailable 4/18, 4/19  
April 25 - 29 Patterson unavailable  
May 2 - 6  
May 9 - 13 Jacobson unavailable  
May 16 - 20 Judge unavailable  
May 23 - 27 Judge unavailable  
May 31 - June 3 Melnick unavailable  
June 6 - 10 Melnick unavailable  
June 13 - 17  
June 20 - 24  
June 27 - July 1  
July 5 - 8 Melnick unavailable  
July 11 - 15 Melnick unavailable  
July 18 - 22 Melnick unavailable  
July 25 - 29 Melnick unavailable  
August 1 - 5 Melnick unavailable  
August 8 - 12 Melnick unavailable  
August 15 - 19 Melnick unavailable  
August 22 - 26  
August 29 - September 2  
September 6 - 9  
September 12 - 16  
September 19 - 23  
September 26 - 30

I hope that helps. Folks can cut and paste this list, and add their problem weeks. If everyone can share their unavailability then at least we can all know where we are. Thanks.

Marc

-----Original Message-----

From: Patterson, Gregory <G.Patterson@musickpeeler.com>

Sent: Thursday, January 6, 2022 2:57 PM

To: Carter, William <W.Carter@musickpeeler.com>; Christopher Pisano <Christopher.Pisano@bbklaw.com>; Holly J. Jacobson <hjj@bkslawfirm.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; Gregg Garrison <gsgarrison@garrisonlawcorp.com>; Marc Melnick <Marc.Melnick@doj.ca.gov>; Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>; Daniel Cooper <daniel@sycamore.law>; Shawn Hagerty <Shawn.Hagerty@bbklaw.com>

Subject: FW: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

I am including folks who are active in trying to determine a new trial date. There may be others who have an interest. (PLEASE MAKE SURE YOU INCLUDE MY PARTNER, BILL CARTER. ON ALL E-MAILS.)

See below regarding Judge Highberger's March schedule. He can start March 7, but then leaves on a trip on the 16th.

We are agreeable to start on March 7, but understand that we may have a hiatus and sequential trial dates based on everyone's schedule.

I want to make it clear that 2/14 simply is not going to work for us and we will seek a continuance and let the Court decide on a schedule if we can't figure this out soon.

Happy to discuss proposals.

Regards,

Greg

Gregory J. Patterson  
Partner

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[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.musickpeeler.com&d=DwlGaQ&c=uASjV29gZuJt5\\_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm\\_A9ukaX70&m=DLjjQBsfOMYsi6-B-JMP3-a8E43IXfjFKlpdxUt5f89JkAKJXTJGhnopO6Ke5pKX&s=m4qZiWHKA2e6L04wZ3LWE1WwmK\\_lehZSz0MH4C705IU&e=T\(805\)418-3103](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.musickpeeler.com&d=DwlGaQ&c=uASjV29gZuJt5_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm_A9ukaX70&m=DLjjQBsfOMYsi6-B-JMP3-a8E43IXfjFKlpdxUt5f89JkAKJXTJGhnopO6Ke5pKX&s=m4qZiWHKA2e6L04wZ3LWE1WwmK_lehZSz0MH4C705IU&e=T(805)418-3103)

F (805) 418-3101

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-----Original Message-----

From: FileAndServeXpress <[MessageBoardNotification@secure-mail.fileandservexpress.com](mailto:MessageBoardNotification@secure-mail.fileandservexpress.com)>  
Sent: Thursday, January 6, 2022 1:21 PM  
To: Patterson, Gregory <[G.Patterson@musickpeeler.com](mailto:G.Patterson@musickpeeler.com)>  
Subject: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

To: Patterson, Gregory, Musick Peeler & Garrett LLP- Westlake Village  
Subject: New Message Board Posting

Message Board Name: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

Subject: RE: Continuance of trial

Message Text: But you didn't ask about my availability in March.

My wife and I have a long-planned escorted tour to Egypt and Jordan set, leaving the afternoon of Wed. March 16 and returning on Thurs. March 31. Just 48 hours ago we were advised that the Jordan extension had been cancelled due to covid, but they "still plan to operate the Egypt part of this trip at this time." Airfare to Egypt, back from Jordan has already been purchased on non-refundable basis. So I do not recommend that you expect to start a 3-week court trial on March 7 unless you are OK with a hiatus. (That would be OK with me.)

A new message has been posted to a message board to which you are a member of. To view this message, click on the following link:

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